**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE JURISDICTION**

**FIRST APPEAL NO. 305 OF 2007.**

National Insurance Co.Ltd. ... Appellant.
Versus.
Ramchandra Dnyandeo Lotke and others. ... Respondents.

Shri N.G.Ghotekar with Ms.Shama Ghotekar for the Appellant.

Shri V.B.Rajure for the Respondents Nos.2 to 4.

**CORAM : ABHAY S.OKA, J.**

**DATED : 5th March, 2007.**

**P.C.:**

1. Submissions of the Advocates appearing for the parties were heard on the last date.

2. The Appellant is the insurer of the vehicle involved in the accident. The challenge in this first Appeal is to the Judgment and Award dated 28th October 2005 passed by the learned Member of the Motor Accident Claims Tribunal, Jaisingpur. The first four Respondents are the original Claimants. The wife of the 1st Respondent died in the accident in question. The 1st Respondent (since deceased) is the husband of the deceased and 2nd to 4th Respondents are the children of the deceased. The deceased was travelling in a Maruti van when a truck insured with the Appellant gave a dash

to the Maruti van while proceeding from Vita to Ichalkaranji. The truck at the relevant time was owned by the 6th Respondent. The Appellant-insurer was granted a leave under section 170 of the Motor Vehicles Act 1966 to defend the claim as the insured did not come forward to defend the claim. By the impugned Judgment and Award, the Claimants were awarded compensation of Rs.4 lakhs together with interest at the rate of 12% per annum from the date of the petition till realisation.

3. The submission of the learned Advocate for the Appellant is that considering the evidence led by the original Claimants as regards the age of the deceased, the multiplier adopted by the Tribunal is on the higher side. It is submitted that at the time of death, the age of the deceased was 32 years and therefore, the multiplier applied by the Tribunal is certainly on the higher side. It is submitted that the income taken into consideration by the Tribunal is on the higher side. It is submitted that the claim petition was filed in the year 1994 and therefore, the interest at the rate of 12% per annum is certainly on higher side considering the various decisions of the Apex Court. Shri Rajure appearing for the Respondents Nos.2 to 4 supported the impugned Award by pointing out that considering the facts and circumstances of the case, the quantum of compensation fixed by the trial Court was just and

proper.

4. I have considered the submissions. The income-tax returns of the deceased for the years 1994-1995 produced on record show the yearly income of the deceased to be Rs.30,000/-. After considering the fact that the business was in partnership from the year 1992, the learned Member of the Tribunal has taken the overall income of the deceased at Rs.25,000/- per annum. After holding that the average income was Rs.25,000/- per annum, the learned Member of the Tribunal observed that the deceased was doing household work in the house and therefore, she must be saving Rs.10,000/- per annum. Therefore, the learned Judge has taken the income of the deceased at Rs.35,000/-. On a plain reading of the findings recorded by the learned Judge in paragraph 9, it is obvious that the income of Rs.35,000/- per annum taken by the Tribunal is on the higher side. The last return produced by the Claimants shows the income of the deceased was Rs.30,800/-. Taking an overall view of the matter, for calculating multiplier, income ought to have been taken at Rs.30,000/-. One-third of the amount has to be deducted on account of personal expenditure. Therefore, the multiplcand will be Rs.20,000/-. Considering the fact that the age of the deceased was 32 years at the time of the accident, the multiplier will have to be taken at 13. Thus the compensation payable

will be Rs.2,60,000/-. Considering that the children of the deceased were minor at the time of her death, the total amount of Rs.30,000/- has been awarded by the trial Court on account of loss of love and affection. An amount of Rs.2000/- on account of funeral expenses has been awarded. Considering the respective ages of the children at the time of death of the deceased, the amount awarded by the learned trial Judge on account of loss of love and affection is reasonable. Therefore, the total amount of compensation will have to be fixed at Rs.2,92,000/-.

5. The original claim petition was filed in the year 1994. Considering the year of filing of the claim petition, the interest could not have exceeded 9% per annum. The rate of interest, therefore, will have to be reduced to 9% per annum. Hence the impugned Award needs modification.

6. Hence the following order is passed:

(i) The impugned Judgment and Award dated 28th October 2005 is modified and now the operative part of the impugned Award will read thus:

"(1) Petition is hereby allowed with costs.

(2) Opponent No.2 and 3 shall pay an amount of Rs.2,92,000/- (Rupees Two lakhs Ninty-two thousand only) jointly and severally to the petitioners together with interest at the rate of 9% per annum from the date of petition till actual realization of entire amount.

(3) Upon deposit of amount, sum of Rs.75,000/- be kept in the name of Petitioners Nos.2,3 and 4 each by way of fixed deposit in any Nationalized Bank for a period of five years with liberty to take quarterly accrued interest on said fixed deposit.

(4) No loan or encumbrance is allowed on the fixed deposits without prior permission of this tribunal.

(5) After maturity, the amount under fixed deposit be directly paid to respective petitioner without waiting for any orders or directions from this tribunal.

(6) Rest of the amount be paid to Petitioners Nos.2, 3 and 4 equally by account payee cheques.

(7) Disbursement of compensation amount shall take place on deposit of deficit court fees by the Petitioners.

(8) Award be drawn accordingly."

ii) The Appellant will be entitled to the refund of Rs.25,000/- deposited in this Court.

iii) The Appeal is partly allowed with no order as to costs.

**Judge.**